IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 13.02.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

S.A.No.542 of 1997

1.Rani
2.Minor Ramachandran
3.Minor Jayakodi
4.Minor Kumudam
5.Minor Sundari .. Appellants/Appellant 2 to 6/LRs of the Def.4

(Minors 2 to 5 represented by
next friend and mother as guardian
the 1st appellant)

vs.

1.Arunthavam
2.Dhanalakshmi
3.Chinnaponnu
4.Panneer
5.Selvam
6.Tamilarasi .. Respondents

(Respondents 2 to 6 are Exparte before
the Lower Court and hence notice herewith)

Prayer: This second appeal has been preferred against the decree and judgment dated 28.10.1996 passed by the learned Subordinate Judge, Chidambaram, in A.S.No.31/1990, confirming the decree and judgment dated 31.7.1990 in O.S.No.1058/81 on the file of the District Munsif, Chidambaram.

For Appellants : Mr.J.Antony Jesus for Mr. K. Srinivasan

For Respondents : Mr.Srinath Sridevan R1

JUDGMENT

This appeal has been preferred against the decree and judgment in A.S.No.31 of 1990 on the file of the Court of Subordinate Judge, Chidambaram. The defendants in O.S.No.1058/1981 on the file of the Court ofDistrict Munsif, Chidambaram, who have lost their defence before the trial Court and also their appeal before the first

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appellate Court, are the appellants herein.

2. The short facts of the plaint relevant for deciding this appeal sans irrelevant particulars are as follows:-

The suit property absolutely belonged to Dhanabagyam, wife of Subbaraya Chettiar. The said Dhanabagyam is the mother-in-law of the plaintiff. Dhanabagyam executed a Settlement deed on 5.5.1958 at the time of plaintiff's marriage. Dhanabagyam's son Ayyathurai was married to plaintiff in 1958. As per the settlement deed, the plaintiff and her husband are entitled to the suit properties. The said settlement deed was acted upon and possession was handedover under the document. The suit properties immediately vested with the plaintiff and her husband who have four children, they were in continuous possession and enjoyment of the suit properties from the date of said document. The settlor Dhanabagyam was maintained throughout by the plaintiff and her husband. Dhanabagyam died in the year 1974 and Ayyadurai died in the year 1976. The plaintiff is the present owner of the suit properties. She had right title and interest in the suit property. Defendants have no right, title or interest in respect of the plaint schedule properties. The second defendant is the daughter of Dhanabagyam. D3 is the daughter of D2. D2 and D3 have set up D1 & D4 to give trouble to plaintiff. Troubles arose only after the death of plaintiff's husband in1976. In July 1977 defendants caused interference to plaintiff's possession of suit properties. The plaintiff was not allowed to cultivate the suit property taking advantage that the plaintiff is a helpless poor widow. Plaintiff's efforts to mediate the matter failed. Defendants are powerful and highhanded. All these years she hoped that she could settle the matter and waited, but in vain. From July 1977 defendants are in wrongful possession and enjoyment of the suit properties. They are trespassers. They have no rights to continue in possession. While the suit is pending the 1st defendant died. His legal representatives are the defendants 5 to 9. The 5th defendant is his widow and defendants 6 to 9 are his children. Hence, the suit.

3. The D1 & D2 died. D3, D5 to D9 remain exparte. D4 is the only contesting defendant, who has filed the following written statement:-

The allegation in the plaint that the suit property belonged to plaintiff's mother-in-law Dhanabagyam and that the plaintiff and her husband became owner of the suit property under a settlement deed dated 5.5.1958 alleged to have been executed by the said Dhanabagyam are all not true. The suit properties do not belong to Dhanabagyam. The settlement deed dated 5.5.1958 was not acted upon. The plaintiff and her husband never maintained Dhanapagyam. The defendants are not attempting to give any trouble to the plaintiff. It is not true that after the death of plaintiff's husband, the defendants began to give trouble to the plaintiff. The defendants have not trespassed into the suit

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property. In respect of plaint schedule item No.1 on the southern 29 cents and in plaint item No.2, 78 cents and also in respect of other properties the defendants are paying land tax and the patta also stands in the name of D4 and for the past 20 years D4 is in possession and enjoyment of the suit property. D4 has purchased the suit property on 26.6.1981 and he is in possession and enjoyment of the suit property from the date of the above said sale deed. The first defendant had purchased 29 cents on the southern portion of item No.1 and 25 cents on the northern portion of item No.2 from Kumarasamy and Nagaraj on 22.10.1964. He has also purchased 53 cents on the southern portion of item No.2 to the plaint schedule from Kaliyaperuma and Kupusamy. D4 has purchased the above said properties as per the sale deed dated 26.6.1981 from the D1. In the plaint item No.1 northern 87 cents belonged to D1 to D3 since they were in possession and enjoyment of the same for the past 15 years, from whom, D4 had purchased the same on 11.7.1981 for a sum of Rs.4,400/-. Hence, the suit is liable to be dismissed with costs.

4. On the above pleadings the learned trial judge had framed eight issues for trial. On the side of the plaintiff, plaintiff has examined herself has P.W.1 and Ex.A.1 to A.9 were marked. On the side of the defendants, D4 has examined himself as D.W.1 and Ex.B.1 and B.2 were marked. After going through the evidence both oral and documentary the learned trial Judge has come to the conclusion that the plaintiff is entitled to 87 cents on the northern side of the plaint schedule item No.1 property and that plaintiff is entitled to the entire plaint item No.2 property and consequently decreed the suit in that line but has dismissed the suit in respect of southern 29 cents in item No.1, and also with a direction to initiate separate proceedings under Order 20 Rule 12 CPC in repsect of the plaintiff's relief for mesne profits. Aggrieved by the findings of the learned trial judge, D4 has preferred A.S.No.31 of 1990 before the Subordinate Judge, Chidambaram, who after hearing both sides has dismissed the appeal confirming the decree and judgment of the trial Court in O.S.No.1058/1981 without costs. Hence, the second appeal before this court by the fourth defendant.

5. The substantial questions of law involved in this second appeal are as follows:-

> "a) Whether the findings of the courts below regarding title to item 1 and2 of the suit property are vitiated by its failure to consider the prior title deeds under Ex.B.1, Ex.B.2, in respect of northern 25 cents and Ex.B.3 to Ex.B.5 and Ex.B.19 in southern 53 cents in item 2 especially in the absence of any prior title produced on the side of the 1st respondent?
>
> b) Whether the findings of the courts below regarding possession are vitiated by its failure to consider Ex.B.9 to Ex.B.18 the Adangal Extracts of the predecessors in title of the appellants?

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c) Whether the findings of the courts below is correct in upholding the title of the 1st respondent on the basis of Ex.A.1 especially when it was found concurrently that the 1st respondent is not entitled to a portion of the suit property in item 1?

6.The Points:-

6(a) The plaint schedule properties are (i) 1 acres 16 cents in R.S.No.91/1 and (ii) 78 cents in R.S.No.92/1 Sethiathope Village. The plaintiff claims her title in respect of the suit properties under Ex.A.1 settlement deed dated 5.5.1958 executed by her mother-in-law Dhanabagyam and that Dhanabagyam died in the year 1974 and till her death she has been looked after by her and her (P.W.1) husband.

6(b) A perusal of Ex.A.1, original registered settlement deed dated 5.5.1958, will go to show that Dhanabagyam, the settlor had settled her properties in favour of the plaintiff. Under Ex.A.1, settlement deed, 1 acre 16 cents in R.S.No.91/1 and 78 cents in R.S.No.92/1 at Sethiathope Village, were settled in favour of the plaintiff. Ex.A.2 is the sale deed in favour of Dhanabagyam dated 13.12.1949 executed by one Chinapillai Ammal. Under the said sale deed Dhanabagyam had purchased 1 acre 16 cents in R.S.No.91/1 and 78 cents in R.S.No.92/1 at Sethiathope village.

6(c) Ex.A.3 to A.8 are the land tax receipts in favour of Dhanabagyam, which also includes the land in patta No.526. Ex.A.9 is the sale deed in favour of D4-Ranganathan dated 11.7.1981 executed by Dhanabaluammal(D2), wife of Thangarasu Chettiar, Thanalakshmi(D3) wife of Ramalinga Chettiar, and Panchanathn(D1) S/o.Appadurai Padayachi. The said sale deed is for 87 cents in R.S.No.91/1 out of 1 acre 16 cents. Under Ex.A.9 D4 cannot claim any right in respect of 87 cents out of 1 acre 16 cents in R.S.No.91/1 because even before the execution of Ex.A.9-sale deed in favour of D4 by D1 to D3, the original owner Dhanabagyam had executed Ex.A.1-settlement deed in favour of the plaintiff as early as on 5.5.1958 itself. Under Ex.A.9 the vendors are D1 and son of Dhanbagyam (D2) and the son of D2 (D3).

6(d) D4, as D.W.1, would contend that he had purchased 29 cents under Ex.B.3 in item No.1. Ex.B.3 is dated 26.6.1981. As per Ex.B.3-sale deed, D4 has purchased from D1, 29 cents out of 78 cents in S.No.92/1 which is plaint schedule item No.1 property (1 acres 16 cents) and he has also purchased 91 cents in S.No.92/3A (not suit property). D1 had purchased 29 cents in S.No.91/1 (plaint schedule item No.1 - 1 acre 16 cents) and also 54 cents out of 78 cents in S.No.92/1 from children of one Samynatha Padayatchi, who had purchased 29 cents in S.No.91/1 from one Narayanasamy Padayachi under Ex.B.1. Ex.B.4 is in favour of D1 dated 30.6.1962 in respect of 53 cents out of 78 cents in S.No.92/1 and 25 cents out of 91 cents in S.No.92/3A. But under Ex.B.4 D1 cannot claim any right in S.No.92/1 (plaint schedule item No.2) because the entire 78 cents have been purchased by Dhanabagyam under Ex.A.2 as early as

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13.12.1949, who had conveyed the entire 78 cents in S.No.92/1 in favour of the plaintiff under Ex.A.1 dated 5.5.1958. Ex.B.4 (30.6.1962) is later in point of time than Ex.A.1(5.5.1958). As far as item No.1 is concerned Narayana Padayachi has executed Ex.B.1 on 28.10.1944 in respect of 29 cents in S.No.91/1. The children of Samynatha Padayachi vendee under Ex.B.1 have conveyed the said 29 cents under Ex.B.2 in favour of D1. Under such circumstances only, the courts below have correctly held that since Ex.A.2(13.12.1949) is later to Ex.B.1(28.10.1944), Dhanabagyam herself will be entitled in R.S.No.91/1 only 87 cents and hence under Ex.A.1 Dhanabagyam could convey only 87 cents in R.S.No.91/1 in favour of plaintiff since the remaining 29 cents in R.S.No.91/1 has already been sold under Ex.B.1 dated 28.10.1944 in favour of Samynatha padayachi by Narayana Padayatchi.

6(e) The learned counsel for the appellant would contend that under Ex.B.20 Samynatha Padayachi had purchased 25 cents out of 78 cents in R.S.No.92/1 (plaint schedule item No.2) and hence the plaintiff cannot claim right in respect of entire 78 cents. This contention of the learned counsel for the appellant cannot be upheld because in Ex.B.20 the patta number for the property sold under Ex.B.20 is mentioend as No.526. But Ex.A.3 to A.8 tax receipts will go to show that patta No.526 stands in the name of Dhanabagyam. So under Ex.B.20 Samynatha Padayachi cannot claim any right in respect of S.No.92/1. So in respect of item No.2 to the plaint schedule property, the defendants cannot claim any right as rightly held by the both the courts below. Further the plaintiff has also not filed any cross appeal in respect of 29 cents in S.No.91/1 in plaint item No.1 property. Under such circumstances, I do not find any reason to interfere with the well considered judgment of the learned first appellate Court in A.S.No.31/1990 on the file of the Court of Subordinate Judge, Chidambaram, which is neither illegal nor infirm to warrant any interference from this Court. Points are answered accordingly.

7 In fine, the second appeal is dismissed confirming the decree and judgment in A.S.No.31/1990 on the file of the Court of Subordinate Judge, Chidambaram, with costs.

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To,

1.The Subordinate Judge, Chidambaram.
2.The District Munsif, Chidambaram.
3. The Record Keeper, VR Section, High Court, Madras

+ one cc to Mr. K. Srinivasan, Advocate sr no. 9174
+ one cc to Mr. Srinath Sridevan, Advocate sr no 9205

PV(CO)
NM(17.03.07)

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